

REMARKS

Applicant respectfully requests reconsideration of the subject application in view of the amendments and remarks set forth herein.

1. Claim Amendments

Applicant has amended independent claim 1 to more precisely define the presently claimed subject matter. Support for the claim amendments is found in the specification, as filed. Applicant has also amended claims 3, 12-14, 17 and 20 to further clarify the subject matters thereof. Claim 2 has been cancelled, without prejudice. Applicant respectfully submits that no new matter is introduced by way of the foregoing claim amendments. Prompt entry of the proposed claim amendments is respectfully requested.

2. Double Patenting Rejection

Applicant notes the outstanding nonstatutory double patenting provisional rejection of claims 1-24 over claims, 1, 9, 11-17, 24-29, and 32-39 of copending Application No. 10/004,787. Applicant submits herewith a Terminal Disclaimer which, *inter alia*, disclaims any term of the subject application that would extend beyond the term of US Application No. 10/004,787.

The Commissioner is authorized to charge the required fee for entry of this terminal disclaimer of \$130.00 pursuant to 37 C.F.R. § 1.20(d), and any additional fees due or to credit any overpayment to Deposit Account No. 503570. **A duplicate copy of this sheet is enclosed.**

Applicant respectfully submits that the enclosed Terminal Disclaimer obviates the outstanding double patenting rejection. Reconsideration and withdrawal of such rejection are requested.

3. 35 USC § 103(a) Rejection

The outstanding Office Action sets forth one rejection under 35 USC § 103(a) as follows:

Claim 1 is rejected under 35 USC § 103(a) as being unpatentable over Seymour et al. (US 5,724,259) in view of Delueg (US 5,128,710).

In view of amended claim 1, applicant respectfully traverses the rejection. Reconsideration of the foregoing section 103 rejection is respectfully requested.

Currently amended claim 1 has been amended to include the language of cancelled claim 2 thus stating, "... wherein the data processing means is constructed for calculating from the measured data of the measured object or object to be measured a scattered light image and subtracting the latter pixel-by-pixel from the measured data of the measured object." Accordingly, none of the references alone or in combination teach or suggest a data processing means constructed for calculating from the measured data of the measured object or object to be measured a scattered light image and subtracting the later pixel-by-pixel from the measured data of the measured object.

Moreover, the Examiner submits in paragraph 6 of the outstanding Office Action, "With regard to claims 2-24, the prior art of record, taken alone or in combination, fails to disclose or render obvious the limitations of said claims. However, claims 2-24 are

objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims or if the rejection to the base claim can be overcome with amendment or other means.” Thus, Claim 1 has been amended in accordance with the Examiner’s suggestion. Since the Examiner has not explicitly criticized the subject matter of cancelled claim 2, the amended independent claim 1 comprising the language of cancelled claim 2 should be regarded as allowable. Also, the subject matter of amended claim 1, is neither disclosed, nor suggested in Seymour et al.

Applicant’s amendment of independent claim 1 to include the recitations of cancelled dependent claim 2 is without prejudice and does not indicate acquiescence in the outstanding rejection of independent claim 1. Rather, the present amendment is made to advance prosecution of the present application to prompt allowance. Applicant expressly reserves the right to pursue the subject matter of original claim 1, and any additional subject matter set forth in the present application, through one or more continuation applications.